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Nos. 85-792, 85-793

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

INTERSTATE COMMERCE COMMISSION AND
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
Petitioners,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND
UNITED TRANSPORTATION UNION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF RESPONDENTS UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY IN SUPPORT OF PETITIONS

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November 1985

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Respondents Union Pacific Railroad Company and Missouri Pacific Railroad Company (collectively "UP/MP"), intervenors in the court below, submit this brief in support of the petitions for certiorari filed by the Interstate Commerce Commission and the Missouri-Kansas-Texas Railroad Company ("MKT").

Union Pacific and Missouri Pacific support the petitions notwithstanding the fact that their interests in this dispute appear to conflict with those of petitioner MKT. UP/MP are the "landlords" of the trackage rights at issue below; the relief sought by the unions would allow UP/MP employees to

participate in the selection of crews to operate the trains of UP/MP's tenant and competitor, MKT. As Judge MacKinnon recognized below (MKT Pet., A32-33), affording one railroad's employees a right to participate in selecting the crews to operate its competitors' trains would be not only unprecedented, but it would also create significant competitive and labor problems in the railroad industry. For that reason, UP/MP have supported MKT's position throughout these proceedings.

The chaos and confusion caused by the decision below is illustrated by the unions' threat to strike Missouri Pacific because of MKT's decision to exclude UP/MP employees from the process of selecting crews to operate MKT's trains. See *generally Missouri Pacific Railroad Co.* v. *United Transportation Union*, 580 F. Supp. 1490 (E.D. Mo. 1984), *appeal pending*, No. 84-1465 (8th Cir.). The unions' strike notice, which purported to be based on rights afforded by the Railway Labor Act, threatened to abrogate the public interest benefits of a transaction approved by the ICC under the Interstate Commerce Act, as well as the public interest in maintaining the uninterrupted flow of interstate commerce. —

Such public interest concerns and considerations surely shaped Congress' intent in enacting the Interstate Commerce Act, the language and legislative history of which make unambiguously clear that transactions approved by the ICC are exempt "from all other law . . . necessary to let that person carry out the transaction . . . ." 49 U.S.C. § 11341(a). Recognition of that unambiguous statutory language—and of its application to the Railway Labor Act—is reflected in decisions of the Sixth and Eighth Circuit Courts of Appeals, with which the decision below squarely conflicts. See *Brotherhood of Locomotive Engineers* v. *Chicago and North Western Railway*, 314 F.2d 424 (8th Cir.), *cert. denied*, 375 U.S. 819 (1963); *Nemitz* v. *Norfolk & Western Railway*, 436 F.2d 841 (6th Cir.), *aff'd on other grounds*, 404 U.S. 37 (1971).

To resolve the conflict among the Circuits created by the decision below, and to prevent the regulatory confusion and industry chaos that the D.C. Circuit Court's decision would entail, this Court should grant the ICC and MKT petitions.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the petitions of the Interstate Commerce Commission and the Missouri-Kansas-Texas Railroad Company, we respectfully urge the Court to issue the requested writ of certiorari to review the decision of the D.C. Circuit below.

Respectfully submitted,

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APPENDIX

Set forth below, pursuant to Rule 28.1, is a list of all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of Respondents Union Pacific Railroad Company and Missouri Pacific Railroad Company:

The Alton & Southern Railway Company
Arkansas & Memphis Railway Bridge and Terminal Company
The Belt Railway Company of Chicago
Brownsville & Matamoros Bridge Company
Camas Prairie Railroad Company
Chicago and Western Indiana Railroad Company
The Denver Union Terminal Railway Company
Galveston, Houston and Henderson Railway Company
Great Southwest Railroad, Inc.
Houston Belt & Terminal Railway Company
Jefferson Southwestern Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
Portland Traction Company
Portland Terminal Railroad Company
The St. Joseph and Grand Island Railway Company
St. Joseph Terminal Railroad Company
Southern Illinois and Missouri Bridge Company
Terminal Industrial Land Company
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
Trailer Train Company